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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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11 THE NEXT VIETNAM PROJECTS
12 FOUNDATION, INC.;
13 RADIX FOUNDATION aka
14 VIETNAM VETERANS FOR
15 FACTUAL HISTORY;
16 SAIGON BROADCASTING
17 TELEVISION NETWORK, INC.;
18 MY VAN INTERNATIONAL, INC.;
19 NAM PHAM;
20 CARINA OANH HOANG;
21 DIEP PHAN;
22 TRONG PHAN;
23 SON NGUYEN;
24 THANH PHUONG LE; and
25 MINH NGUYEN,

26 Plaintiffs,

27 v.

28 KOSTER FILMS, LLC;
FREDERICK KOSTER;
BT PRODUCTION, LLC; and
BRIAN TOOKER,

Defendants.

FREDERICK KOSTER,

Counterclaimant,

v.

THE NEXT VIETNAM PROJECTS
FOUNDATION, INC.,

Case No. 8:22-cv-02130-JWH-DFM

**ORDER GRANTING PLAINTIFFS'
MOTION TO SUBSTITUTE
ATTORNEY AND PLAINTIFFS'
MOTION TO EXTEND
DISCOVERY [ECF Nos. 108 and
109]**

1 RADIX FOUNDATION aka
2 VIETNAM VETERANS FOR
3 FACTUAL HISTORY,
4 SAIGON BROADCASTING
5 NETWORK, INC.,
6 MY VAN INTERNATIONAL, INC.,
7 NAM PHAM,
8 CARINA OANH HOANG,
9 DIEP PHAN,
10 TRONG PHAN,
11 SON NGUYEN,
12 THANH PHUONG LE, and
13 MINH NGUYEN,
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Counterdefendants.

Before the Court are the following two motions filed by Plaintiffs and Counterdefendants The Next Vietnam Projects Foundation, Inc.; Radix Foundation aka Vietnam Veterans for Factual History; Saigon Broadcasting Television Network, Inc.; My Van International, Inc.; Nam Pham; Carina Oanh Hoang; Diep Phan; Trong Phan; Son Nguyen; Thanh Phuong Le; and Minh Nguyen (collectively, “Plaintiffs”):

- Motion to Substitute Counsel;¹ and
- Motion to Extend Discovery.²

The Court concludes that these matters are appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support and in opposition,³ the Court orders that both Motions are **GRANTED**, for the reasons set forth herein.

I. BACKGROUND

In November 2022, Plaintiffs commenced this action against Defendants Koster Films, LLC; Frederick Koster; BT Productions, LLC; and Brian

¹ Mot. to Substitute Counsel for the Pls. (the “Motion to Substitute Counsel”) [ECF No. 108].

² Pls.’ Mot. in Supp. of its Opposed Mot. to Extend Discovery (the “Motion to Extend Discovery”) [ECF No. 109].

³ The Court considered the documents of record in this action, including the following papers: (1) Compl. (the “Complaint”) (including its attachments) [ECF No. 1]; (2) Motion to Substitute Counsel (including its attachment); (3) Def.’s Mot. in Opp’n to Motion to Substitute Counsel (the “Substitute Counsel Opposition”) [ECF No. 111]; (4) Def.’s Decl. for Opp’n to Motion to Substitute Counsel [ECF No. 112]; (5) Pls.’ Reply in Supp. of the Motion (the “Substitute Counsel Reply”) [ECF No. 118] (including its attachment); (6) Motion to Extend Discovery (including its attachment); (7) Def.’s Opp’n to the Motion to Extend Discovery [ECF No. 117]; (8) Def.’s Decls. in Supp. of the Opposition [ECF Nos. 115 & 116]; and (9) Pls.’ Reply in Supp. of the Motion to Extend Discovery [ECF No. 119].

1 Tooker.⁴ In their Complaint, Plaintiffs allege that Frederick Koster and Koster
 2 Films were hired to work on a feature documentary film, but Koster breached
 3 the agreement by refusing to turn over the film and attempting to sell the film
 4 and interviews for profit.⁵

5 Plaintiffs dismissed BT Productions and Brian Tooker from this action in
 6 May 2023.⁶ Koster, proceeding *pro se*, answered the Complaint two weeks
 7 later,⁷ but Koster Films never filed a response. At Plaintiffs' request, the Clerk
 8 entered default against Koster Films in late May 2023.⁸

9 A month later, Koster filed an amended answer with counterclaims.⁹ In
 10 September 2023, Koster again amended his pleading.¹⁰ Plaintiffs moved to
 11 strike Koster's Amended Counterclaim for conversion pursuant to
 12 Cal. Civ. Proc. Code § 425.16, or, in the alternative, to dismiss it pursuant to
 13 Rule 12(b)(6) of the Federal Rules of Civil Procedure.¹¹ Plaintiffs also moved for
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18 ⁴ *See generally* Complaint.

19 ⁵ *Id.* at ¶¶ 1 & 2.

20 ⁶ Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or
 21 (c) [ECF No. 47].

22 ⁷ Def.'s Answers, Affirmative Defenses [ECF No. 53].

23 ⁸ Default by Clerk [ECF No. 58].

24 ⁹ Rule 15(a) Amended Def.'s Answers, Affirmative Defenses Counterclaim
 25 [ECF No. 60].

26 ¹⁰ Amended Def.'s Answers, Affirmative Defenses Counterclaim (the
 27 "Amended Counterclaim") [ECF No. 83].

28 ¹¹ Pls.' Mot. to Strike Koster's Amended Countercl. for Conversion
 Pursuant to CCP § 425.16 or, in the Alternative, to Dismiss Pursuant to
 FRCP 12(b)(6) (the "Motion to Dismiss") [ECF No. 88].

1 leave to file an Amended Complaint.¹² In April 2024, the Court granted both of
2 those Motions.¹³

3 In August 2023, the Court set the following case schedule:

4	EVENT	DATE/DEADLINE
5	Deadline for Initial Designation of	March 1, 2024
6	Expert Witnesses	
7	Deadline for Designation of Rebuttal	March 15, 2024
8	Expert Witnesses	
9	All Discovery Cut-Off (including	March 29, 2024
10	hearing of discovery motions)	
11	Last Day to Conduct Settlement	October 27, 2023
12	Conference	
13	Dispositive Motion Hearing Cut-Off	June 7, 2024
14	Deadline for Hearing on Motions <i>in</i>	July 12, 2024
15	<i>Limine</i>	
16	Final Pretrial Conference	July 19, 2024
17	Jury Trial	August 5, 2024 ¹⁴

18 In March 2024, Plaintiffs filed their instant Motion to Substitute Counsel
19 and Motion to Extend Discovery. Both Motions are fully briefed.

20 II. LEGAL STANDARD

21 A. Motion to Withdraw

22 Under this Court's Local Rules, an attorney may not withdraw as counsel
23 from a case pending in this Court except upon leave of court, which must be

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25 ¹² Pls.' Mot. for Leave to File an Amended Compl. (the "Motion for
Leave") [ECF No. 86].

26 ¹³ Order Regarding the Motion to Dismiss and the Motion for Leave [ECF
27 No. 120].

28 ¹⁴ Civil Trial Scheduling Order [ECF No. 81].

1 supported by good cause. *See* L.R. 83-2.3.2. A motion to withdraw as counsel
 2 may be made only upon “written notice given reasonably in advance to the client
 3 and to all other parties who have appeared in the action.” *Id.*

4 A district court has broad discretion to determine what constitutes “good
 5 cause” to withdraw as counsel. *See Thompson v. Special Enforcement, Inc.*, 2008
 6 WL 4811404, at *2 (C.D. Cal. Oct. 27, 2008). Absent undue prejudice to the
 7 client’s interests or the case’s proceedings, “[t]he decision to grant or deny
 8 counsel’s motion to withdraw is committed to the discretion of the trial court.”
 9 *Id.* (citation omitted). In ruling on a motion to withdraw as counsel, a court
 10 generally considers: “(1) the reasons why withdrawal is sought; (2) the
 11 prejudice withdrawal may result to other litigants; (3) the harm withdrawal
 12 might cause to the administration of justice; and (4) the degree to which
 13 withdrawal will delay the resolution of the case.” *Tu Thien The, Inc. v. Tu Thien*
 14 *Telecom, Inc.*, 2014 WL 12580249, at *5 (C.D. Cal. July 11, 2014) (citation
 15 omitted).

16 **B. Motion to Extend Discovery**

17 A district court must issue a Scheduling Order limiting the time to join
 18 other parties, complete discovery, and file motions. *See* Fed. R. Civ. P. 16(b)(3).
 19 The scheduling order “controls the course of the action unless the court
 20 modifies it.” Fed. R. Civ. P. 16(d). “A schedule may be modified only for good
 21 cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). The “good
 22 cause” standard in Rule 16(b) “primarily considers the diligence of the party
 23 seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,
 24 609 (9th Cir. 1992). “Good cause may be found where the moving party shows
 25 it assisted the Court with creating a workable scheduling order, that it is unable
 26 to comply with the scheduling order’s deadlines due to matters not reasonably
 27 foreseeable at the time the scheduling order issued, and that it was diligent in
 28

1 seeking a modification once it became apparent it could not comply with the
2 scheduling order.” *Id.*

3 III. ANALYSIS

4 A. Motion to Substitute Counsel

5 Counsel of record at the law firm Procopio, Cory, Hargreaves & Savitch
6 LLP (“Procopio”) move to withdraw from their representation of Plaintiffs, and
7 they ask the Court to substitute the law firm Kasowitz Benson Torres LLP
8 (“Kasowitz”) as counsel for Plaintiffs.¹⁵ On February 26, 2024, Plaintiffs
9 informed Procopio by email that Plaintiffs would retain new counsel to represent
10 them in this case and that they were having discussions with Kasowitz regarding
11 substituting in.¹⁶ Counsel at Procopio emailed Plaintiffs to confirm the
12 substitution of counsel, to ask if Plaintiffs had any questions or objections
13 regarding the substitution, and to give notice to those Plaintiffs that are
14 organizations regarding their inability to appear *pro se*.¹⁷ No Plaintiff responded
15 with any question or objection to the substitution.¹⁸ Later, Plaintiffs confirmed
16 by email that Kasowitz would represent them in this case going forward.¹⁹ On
17 March 14, 2024, Kasowitz filed a notice of appearance on behalf of Plaintiffs.²⁰

18 Koster objects to Plaintiffs’ proposed substitution of counsel. Koster
19 asserts that a serious conflict of interest exists, because Plaintiff Minh Nguyen is
20 an attorney associated with the Kasowitz firm.²¹ Koster insists that the

21 ¹⁵ See generally Motion to Substitute Counsel.

22 ¹⁶ Decl. of Jacob K. Poorman in Supp. of the Motion to Substitute Counsel
23 [ECF No. 108-2] ¶ 2.

24 ¹⁷ *Id.*

25 ¹⁸ *Id.*

26 ¹⁹ *Id.*

27 ²⁰ Notice of Appearance or Withdrawal of Counsel [ECF No. 106].

28 ²¹ Substitute Counsel Opposition 2:9-14.

1 substitution of Kasowitz for Plaintiffs would be highly prejudicial to Koster.²²
 2 Koster also raises concerns regarding whether Procopio contacted each Plaintiff
 3 concerning the anticipated substitution of counsel.²³

4 After considering the facts and the applicable law, the Court concludes
 5 that the Motion to Substitute Counsel must be granted. Procopio has shown
 6 good cause to withdraw as counsel of record for Plaintiffs. Although Koster
 7 speculates regarding whether a conflict of interest may exist, the Court agrees
 8 with Procopio's assertion that "Plaintiffs have a right to their counsel of
 9 choice[.]"²⁴ *See Cole v. U.S. Dist. Ct. for Dist. of Idaho*, 366 F.3d 813, 817 (9th
 10 Cir. 2004) ("Parties normally have the right to counsel of their choice, so long
 11 as the counsel satisfy required bar admissions[.]"). Procopio has also
 12 demonstrated its compliance with the procedural requirements set forth in this
 13 Court's Local Rules. Procopio is permitted to withdraw from its representation
 14 of Plaintiffs in this action. Accordingly, the Motion to Substitute Counsel is
 15 **GRANTED.**

16 **B. Motion to Extend Discovery**

17 Plaintiffs move to extend discovery for the following reasons:
 18 (1) substituted counsel needs time to prepare this case; (2) the Motion to
 19 Dismiss and Motion for Leave remained under submission throughout the
 20 discovery period; and (3) Koster has allegedly been non-responsive, and he has
 21 failed to participate meaningfully in discovery, despite Plaintiffs' repeated
 22 attempts to secure compliance.²⁵ The Court concludes that Plaintiffs have
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25 ²² *Id.* at 9:9-10:18.

26 ²³ *Id.* at 2:16-17.

27 ²⁴ Substitute Counsel Reply 2:7-8.

28 ²⁵ *See generally* Motion to Extend Discovery.

1 shown sufficient good cause to extend the discovery period. Accordingly, the
2 Court **MODIFIES** the Civil Trial Scheduling Order, as set forth below.

3 **IV. DISPOSITION**

4 For the foregoing reasons, the Court hereby **ORDERS** as follows:

5 1. Plaintiffs' Motion to Substitute Counsel [ECF No. 108] is
6 **GRANTED**. The Court permits Procopio, Cory, Hargreaves & Savitch LLP to
7 withdraw as counsel of record for Plaintiffs. Kasowitz Benson Torres LLP is
8 substituted as counsel of record for Plaintiffs.

9 2. Plaintiffs' Motion to Extend Discovery [ECF No. 109] is
10 **GRANTED**. The Court **EXTENDS** the case schedule, as follows:

11 EVENT	NEW DATE/DEADLINE
12 Deadline for Initial Designation of 13 Expert Witnesses	May 31, 2024
14 Deadline for Designation of Rebuttal 15 Expert Witnesses	June 14, 2024
16 All Discovery Cut-Off (including 17 hearing of discovery motions)	June 28, 2024
18 Dispositive Motion Hearing Cut-Off	September 6, 2024
19 Deadline for Hearing on Motions <i>in</i> 20 <i>Limine</i>	October 11, 2024, at 1:00 p.m.
21 Final Pretrial Conference	October 11, 2024, at 1:00 p.m.
Jury Trial	November 4, 2024

22 **IT IS SO ORDERED.**

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24 Dated: April 15, 2024

25 
26 John W. Holcomb
27 UNITED STATES DISTRICT JUDGE
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